

EXHIBIT “E”

Internal Revenue Service
Appeals Office M/S 55203
Fresno, CA 93888-0700

Date: JAN 30 2013

ROBERT F KATZBERG
KAPLAN & KATZBERG
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Department of the Treasury

Person to Contact:

Carol Peters
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Refer Reply to:

AP:CO:FRC:CAP

In Re:

Freedom of Information Act

Tax Period(s) Ended:

12/2012

Dear Mr. Katzberg:

This letter is in response to your December 26, 2012 Freedom of Information Act (FOIA) appeal. The Disclosure Office's Tax Law Specialist response, dated November 30, 2012, which provided no responsive documents to your October 2, 2012 FOIA request.

You requested copies of:

1. All documents reflecting total amounts of dollars received to date as a result of the February 2011 Offshore Voluntary Disclosure Initiative.
2. All documents reflecting how much, in dollars and percentage of the total received, were collected as a result of payments made by participants in the Offshore Voluntary Disclosure Initiative pursuant to Title 31, USC requirements and/or violations.
3. All documents reflecting how much, in dollars and percentage of the total received, were collected as a result of payments made by participants in the Offshore Voluntary Disclosure Initiative pursuant to Title 26, including principal tax due and owing, penalties and interest.
4. All documents reflecting the total amount collected from participants in the 2011 OVDI that were deposited into the US Treasury
5. All documents reflecting the total dollars collected from participants in 2011 OVDI deposited in any other agency or department account – specifically identifying the

agency/department and total amount received by each.

6. Copies of Form 906 closing agreements executed pursuant to the 2011 OVDI, excising names, addresses, SSN, etc.

The Maryland Disclosure Office located 1 page in response to your request; the 1 page was withheld in full. They notated the applicable FOIA exemption on the document withheld in full in their response dated November 30, 2012.

Your appeal states that you are appealing the document withheld in full. Your appeal states that the Tax Law Specialist's position is untenable and that it's obvious to you that an appropriate search was not preformed. You further argue that the relevance of the exemptions was not explained; that you are merely seeking statistical data. Your appeal also takes issue with the one responsive document located; stating that it's impossible that there is only locatable document given the \$5 billion from 33,000 voluntary disclosures collected under all OVDI programs, and the time and extensive nature of the program.

We have reviewed the response of the Disclosure Tax Law Specialist, the Disclosure database, as well as the document withheld and have determined that the response was appropriate.

In regards to your request for copies of all documents as they relate to the 2011 Offshore Voluntary Disclosure Initiative; that a volume of documentation must exist due to the extensive time and monies involved. Appeals is satisfied that a reasonable search for records was performed and that one responsive document was located and withheld in full and the proper exemption applied. Appeals can only address whether the search was reasonable in regard to the adequacy of a search, an agency must prove that "each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements." See Sosa v. FBI, No. 93-1126, slip op. at 1 (D.D.C. Nov. 4, 1993). We believe that the Disclosure Office has met its burden in regard to the adequacy of the search. The Disclosure Office is obligated to research for the documents requested. This was done.

We believe that the Disclosure office performed an adequate search for the documents requested. Although, the initial burden certainly rests with an agency to demonstrate the adequacy of its search, once that obligation is satisfied, the agency's position can be rebutted "only by showing that the agency's search was not made in good faith," Maynard, 986 F.2d at 560 (citing Miller, 779 F.2d at 1383); see, e.g., Carney v. United States Dep't of Justice, 19 F.3d 807, 812 (2d Cir. 1994); Weisberg, 705 F.2d at 1351-52; Triestman v. United States Dep't of Justice, 878 F. Supp. 667, 672 (S.D.N.Y. 1995); Tota v. United States, No. 99-0445E, 2000 WL 1160477, at *2 (W.D.N.Y. 2000) (explaining that to avoid summary judgment in favor of agency, plaintiff must show "bad faith," by "presenting specific facts showing that documents exist" that were not produced); cf. Harvey v. United States Dep't of Justice, No. 92-176, slip op. at 10 (D.

Mont. Jan. 9, 1996) ("The purported bad faith of government agents in separate criminal proceedings is irrelevant to [the] question of the adequate, good faith search for documents responsive to a FOIA request."), aff'd on other grounds, 116 F.3d 484 (9th Cir. 1997) (unpublished table decision) because agency declarations are "entitled to a presumption of good faith. Consequently, a requester's "[m]ere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them."

With respect to this FOIA request, you are seeking copies of documents which concern 2011 Offshore Voluntary Disclosure Initiative. Your request is not a request for existing documents. As the Disclosure Officer properly responded to you, the FOIA does not require agencies to provide explanations or answers in response to questions. Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985); Hudgins v. IRS, 620 F. Supp. 19, 21 (D.D.C. 1985), aff'd, 808 F.2d 137 (D.C. Cir. 1987), cert. denied, 484 U.S. 803 (1987) ("FOIA created only a right to access to records, not a right to personal services"). In addition, the FOIA does not require agencies to create records in response to a request. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975).

Your appeal took the position that the Tax Law Specialist failed to support the exemptions cited and their relevance. FOIA subsection (b)(7)(A) exempts from disclosure, records or information compiled for law enforcement purposes if the production of such law enforcement records could reasonably be expected to interfere with pending or prospective law enforcement proceedings. The term "law enforcement" refers to enforcement through civil, criminal, or regulatory proceedings. Subsection (7)(A) applies "whenever the government's case in court would be harmed by the premature release of the evidence or information," NLRB v. Robbins Tire & Rubber Co., 473 U.S. 214, 232 (1978), or where the disclosure would impede any necessary investigation prior to the proceeding, National Public Radio v. Bell, 431 F. Supp. 509, 514-15 (D. D.C. 1977). In the instant case, disclosure would interfere with the pending administrative proceedings.

Please be aware that Appeals responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. Appeals only has jurisdiction over the denial of documents in response to a FOIA request. We address the adequacy of the search, the appropriateness of the redactions and documents withheld through determined FOIA exemptions. Our written notice is your determination that the redacted information withheld was proper through the FOIA exemptions cited.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation serviced to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have

the authority to handle requests made under the Privacy Act of 1971. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways;

- Office of Government Information Services
- National Archives and Records Administration
- Room 2510
- 8601 Adelphi Road
- College Park, MD 20740-6001
- E-mail: ogis@nara.gov
- Telephone: 301-837-1996
- Facsimile: (301) 837-0348
- Toll-free: 1-(877) 684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to be 'P. Perez' with a checkmark at the end.

P. Perez
Appeals Team Manager